



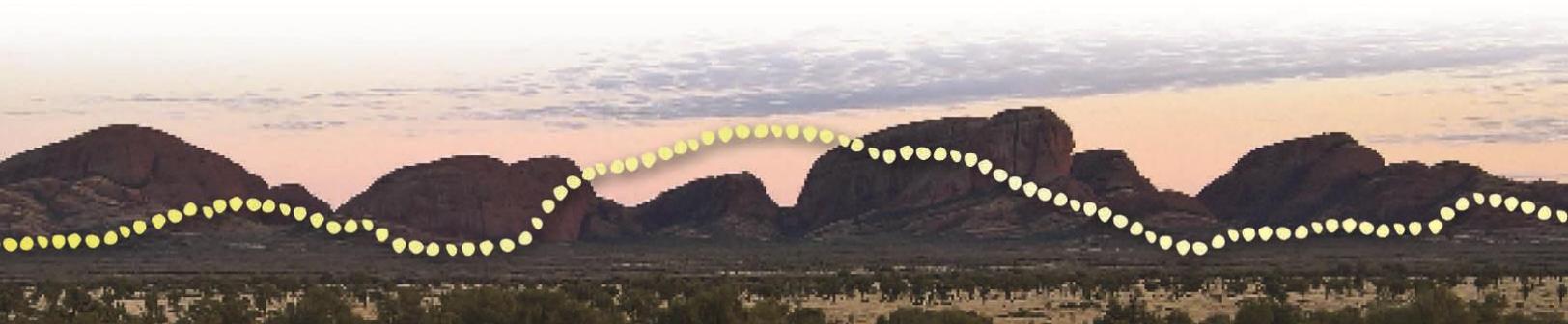
Northern Territory Office of the Public Guardian Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

**RESTRICTIVE PRACTICES**  
**Issues Paper**

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## **Introduction**

The Northern Territory Office of the Public Guardian welcomes the opportunity to provide a submission to the Restrictive Practices Issues Paper released by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Established under the *Guardianship of Adults Act 2016* (the Act), the Office of the Public Guardian is committed to providing adult guardianship services, information and advocacy that is responsive to the needs of the Northern Territory community and reflects contemporary, best practice guardianship principles within a human rights framework.

The Act provides a legal decision-making framework for adults with impaired decision-making capacity in relation to their personal or financial matters. It includes a broad definition of impaired decision-making capacity that captures adults with a cognitive impairment from any cause including mental illness, dementia, intellectual disability or acquired brain injury.

The Act recognises the overall wellbeing, human rights and fundamental freedoms of persons with impaired decision-making capacity and aligns with the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The CRPD's purpose is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity". Article 5 of the CRPD directs equal recognition of all persons and prohibits discrimination on the basis of disability.

There are currently 1,004 persons under a guardianship order in the Northern Territory. The Office of the Public Guardian teams are located in Darwin and Alice Springs and are responsible for providing guardianship services to approximately 580 of these persons. Compared to other jurisdictions, the Northern Territory has the lowest number of adults under guardianship orders however, has the highest percentage of the population under guardianship.

A function of the Public Guardian is to advocate for persons with impaired decision-making capacity by promoting understanding and awareness of relevant issues. This has necessarily included contributing to national and Territory dialogue regarding the use of restrictive practices for people with disability. The Office of the Public Guardian is deeply concerned by the use of restrictive practices for people with disability, especially in the absence of positive behaviour support that focuses on person centred interventions and a regulatory framework for the authorisation and monitoring of these practices across all service sectors. The Royal Commission's inquiry into the use of restrictive practices for people with disability provides an opportunity to consider the experiences of people with impaired decision-making capacity under guardianship in the Northern Territory and provide recommended strategies to reduce and eliminate the use of restrictive practices for people with disability.

### ***The Northern Territory context***

While most Territorians live in regional centres, a significant number live in remote and very remote areas. For Aboriginal<sup>1</sup> people, who make up 30 percent of the Northern Territory population,<sup>2</sup> almost 77 percent live in remote or very remote areas<sup>3</sup>.

The Northern Territory's context is unique and poses challenges for service delivery to a small population spread across vast distances. The sparse population, harsh climate and rough terrain mean health and other supports and services in many parts of the Territory are limited. The Northern Territory's transient population impacts the retention of the skilled workforce as capable individuals have many alternate options elsewhere in Australia. The high cost of living in the Northern Territory is an additional challenge for those in the low socio-economic circumstances.

The Northern Territory population is comprised of many culturally and linguistically diverse groups. Approximately 78 percent of people involved with the Office of the Public Guardian identify as Aboriginal. Many speak English as a second or third language with a significant number living in remote communities. The Office of the Public Guardian has observed a disconnect from country and culture, with a high level of represented persons that identify as Aboriginal experiencing significant difficulties in receiving appropriate support services, including health care, allied services and behaviour support in remote communities.

A transient and insufficiently skilled workforce, language and communication barriers, the limited delivery of support services in remote and very remote communities and a disconnect from country are all factors that may contribute to the presence of behaviours of concern<sup>4</sup> and the subsequent use of restrictive practices for people with disability in the Northern Territory. Strategies to address these contextual factors is likely to also impact the presence and frequency of behaviours of concern and the need to use restrictive practices for people with disability.

### ***Restrictive practices in the Northern Territory***

#### ***NDIS Authorisations Act 2019*** (NT)

Prior to the commencement of the *NDIS Authorisations Act 2019* (NT)<sup>5</sup>, there was very limited authorisation and oversight of restrictive practices for people with disability in the Northern

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<sup>1</sup> The term Aboriginal is used throughout this document to refer to all people of Aboriginal and Torres Strait Islander descent who are living in the Northern Territory. The use of this term reflects the wishes of Aboriginal people in the Northern Territory. Department of the Attorney-General and Justice (2019). *Draft Northern Territory Aboriginal Justice Agreement 2019-2025*.

<sup>2</sup> Department of Treasury and Finance (NT), Population - Northern Territory Economy: Aboriginal Population (2018) <https://nteconomy.nt.gov.au/population>.

<sup>3</sup> Department of Treasury and Finance (NT), Population - Northern Territory Economy: Background (2018) <https://nteconomy.nt.gov.au/population>.

<sup>4</sup> This is the term used within the NDIS and for consistency has been used throughout this submission.

<sup>5</sup> Commencement date 1 July 2019.

Territory<sup>6</sup>. The commencement of the *NDIS Authorisations Act 2019* (NT) met the Northern Territory's obligation under the NDIS Quality and Safeguarding Framework to establish a restrictive practice authorisation framework for NDIS service providers and NDIS participants (the Authorisation Framework). The Authorisation Framework and the establishment of a Senior Practitioner (with their associated expertise and support) in the Northern Territory was welcomed by the Office of the Public Guardian.

However, the limited scope of the legislation to only NDIS service providers and NDIS participants has meant that many Territorians with disability who receive services and supports from other service sectors, including aged care, education, justice and health, fall outside the authorisation framework. Many of these individuals continue to be subject to restrictive practices in the absence of positive behaviour support and a legislated authorisation and monitoring framework for the use of those practices. This is deeply concerning for people with disability, the Office of the Public Guardian and many other advocacy and representative organisations.

### Guardianship

In the absence of an authorisation and monitoring framework for the use of restrictive practices across all service sectors, guardianship has become a means of seeking authorisation for the use of restrictive practices for people with impaired decision-making capacity in the Northern Territory. This has been problematic as the *Guardianship of Adults Act 2016* is silent regarding restrictive practices. In two matters heard by the Northern Territory Civil and Administrative Tribunal (NTCAT) in 2019<sup>7</sup> and 2020<sup>8</sup> the NTCAT determined a guardian's decision-making authority does not extend to the authorisation of restrictive practices or coercive measures and the way to authorise these practices or measures under the *Guardianship of Adults Act 2016* is by virtue of an order of NTCAT under section 35 of this Act. The NTCAT decision of 2020 is currently the subject of an appeal to the Supreme Court of the Northern Territory.

Any use of restrictive practices is a significant infringement upon a person's human and legal rights and while the Office of the Public Guardian is committed to strategies to reduce and eliminate their use, it is also acknowledged that in some circumstances they are required to protect a person with disability or others from harm. In these circumstances their use must be specifically justified and authorised. While an order of NTCAT under section 35 of the *Guardianship of Adults Act 2016* provides a level of oversight and monitoring of the use of restrictive practices or coercive measures for persons under guardianship it does not provide the same level of oversight and monitoring that is provided by the Authorisation Framework. Further, it is the position of the Office of the Public Guardian that the broader guardianship system is an inappropriate vehicle for the balancing of individual human rights with the rights of others, as it lacks the robust oversight, transparency and

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<sup>6</sup> The only authorization and monitoring was under the *Disability Services Act 1993* that provides for the use of restrictive practices applied within government run residential facilities and the *Mental Health and Related Services Act 1998* that provides for the use of restrictive practices within approved treatment facilities.

<sup>7</sup> *Re CC* [2019] NTCAT 13

<sup>8</sup> *Re EH* [2020] NTCAT 17

monitoring framework demanded for the use of restrictive practices. These safeguards are essential to ensure high quality decision making and improvement in individual cases and independent review to ensure systemic improvement in practice, rather than risking reliance on restrictive practices at the expense of an individual's rights<sup>9</sup>.

#### The Office of the Public Guardian's position

It has been recognised internationally and domestically that restrictive practices can be significantly reduced and in many cases, eliminated<sup>10</sup>. The *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* (the National Framework) established a national approach to addressing the use and reduction of restrictive practices by disability service providers across a range of disability service sector settings. It outlined high-level principles to guide work in this area and core strategies to reduce the use of restrictive practices in the disability service sector<sup>11</sup>.

The submissions of the Office of the Public Guardian rely on the work of the National Framework and action that has been taken in response to it. The reduction and elimination of restrictive practices must be underpinned by quality positive behaviour support that focuses on person-centred interventions that address the underlying causes of behaviours of concern. This support must occur within a robust authorisation and monitoring framework across all service sectors that is informed by data and committed to the reduction and elimination of restrictive practices for people with disability. The tension that exists in any submission that both commits to the reduction and elimination of restrictive practices while also endorsing an authorisation and monitoring framework for these same practices is acknowledged.

Strategies to reduce and eliminate the use of restrictive practices for people with disability must be considered in the context of interrelated factors affecting the lives of people with disability including supported decision-making, advocacy, community attitudes, access to mainstream services and workforce issues in the human services sector.

#### ***What are restrictive practices? Does the explanation in this paper need to change?***

The definition of restrictive practices as articulated in the National Framework has become well understood in the disability sector in Australia. The recent amendments to the *Quality of Care Principles 2014* (Cth) use slightly different definitions which has caused confusion for stakeholders operating across both sectors. The Office of the Public Guardian advocates for consistent definitions of restrictive practices and the types of restrictive practices nationally and across all service sectors. Consistent definitions will assist all stakeholders in their understanding and application of these definitions. It will also assist the data collection and reporting of the use of

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<sup>9</sup> Chandler, White & Willmott, 'What role for adult guardianship in authorising restrictive practices?' (2017), *Monash University Law Review*, (Vol 43, No 2) p528

<sup>10</sup> Commonwealth, State and Territory Disability Ministers, *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, (1 May 2013).

<sup>11</sup> Ibid p2

types of restrictive practices across different service sectors and provide accurate data to assess the success or otherwise of frameworks and strategies.

***What types of restrictive practices are applied to people with disability? Are types of restrictive practices more common than others?***

It is the experience of the Office of the Office of the Public Guardian that restrictive practices have routinely been applied to people with disability across all service sectors in the Northern Territory. With minimal oversight, minimal recourse for their unauthorised use, a lack of awareness and understanding of the rights of people with disability and a systemic failure to address this issue, the use of restrictive practices for people with disability has remained largely unauthorised, unmonitored, unreported and used at the discretion and convenience of service providers, government agencies and carers.

In many instances the types of restrictive practices that are applied to people with disability and their frequency is dependent upon the visibility of the setting in which they are applied and whether the setting and the people in it are responsive to the needs of the person with disability. Settings with low visibility are reliant upon whistle blowers within the setting or the advocacy of the person and/or their support network to call out the use of unauthorised and unjustified restrictive practices. This reliance on individuals makes the person with disability more vulnerable to the use of these practices. The responsive of the setting and the people in it to the needs of the person with disability is relevant as unmet need<sup>12</sup> will frequently result in a person with disability attempting to have their needs met through behaviour of concern that subsequently leads to the use of restrictive practices as a convenient means to address the behaviour and without the necessity to investigate the unmet need.

For people with disability hospitals and acute care settings may represent an environment in which they are at significant risk of disconnect from their support networks, including family and carers, specifically modified assistive technology and routines and therefore create a potential for the unmet cultural, social or emotional needs of the person<sup>13</sup>. The fast pace and inflexible structure of hospitals and acute care settings and the pressures on individual staff to meet the health requirements of many, compound the unmet needs of the person with disability and any associated behaviour with these unmet needs. In these instances restrictive practices in the form of chemical restraint, physical restraint and environmental restraint are routinely employed to 'manage' the person with disability and to protect the person and others, including staff, other patients and visitors from harm. While the protection of the person and others may seem appropriate and justified it is often without consideration to the underlying cause of the behaviour leading to the potential for harm and thereby doesn't address this underlying cause or unmet need and is an injustice to the person with the disability and all involved.

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<sup>12</sup> Unmet need includes cultural, health, social, physical and emotional need.

<sup>13</sup> For more information see the Office of the Public Guardian's submission to the Royal Commission's Health Care for People with Cognitive Disability Issues Paper, March 2020.

Similarly, custodial settings represent an environment in which people with disability are removed from their support networks, including family and carers and placed into a highly structured and inflexible setting that is systemically ill equipped to identify and respond to the individual support needs of people with disability<sup>14</sup>. This places people with disability at both increased risk of abuse by other prisoners and to increased risk of the use of restrictive practices, including chemical restraint, physical restraint, seclusion and environmental restraint when the systemic failures of the custodial setting to identify and respond to the individualised needs of the person lead to behaviour that is potentially harmful to the person, to staff or to other prisoners. Again, this behaviour is addressed without consideration to the underlying cause of the behaviour and thereby doesn't address this underlying cause or unmet need and is an injustice to the person with the disability.

The often minimal visibility of supported independent living (SIL) accommodation means the use of restrictive practices in these settings is frequently unreported, unregulated and unauthorised. The support provided through SIL is predominantly from a single service provider with little or no external informal or formal safeguards and oversight. This exposes people with disability in receipt of SIL support at greater risk to the use of restrictive practices. In SIL accommodation the Office of the Public Guardian has witnessed environmental restraint in the form of locked doors and gates and restricted access to certain shared spaces, physical restraint in the form of hands on techniques to prevent a person from acting in a certain way, restriction of access to everyday items including communal fridges and chemical restraint in the form of medication used to modify and 'manage' a person's behaviour and often under the guise of treating a medical condition.

To some extent the authorisation and monitoring framework under the *NDIS Authorisations Act 2019* (NT) and the creation of the NDIS Quality and Safeguards Commission have addressed the use of restrictive practices in NDIS funded SIL accommodation and other NDIS funded services. However, compliance with the framework is reliant upon;

- the service provider, the NDIS participant, their family or carers or any other person involved in their support identifying a practice as restrictive and seeking the appropriate authorisation for its use which involves the support of a behaviour support practitioner and positive behaviour support plan or
- a complaint being made to the NDIS Quality and Safeguards Commission, which is impacted by the identification of a practice as restrictive and awareness of the right to make a complaint and the means and ability to make a complaint.

The Office of the Public Guardian reiterates that restrictive practices have been and continue to be routinely applied to people with disability across all service sectors in the Northern Territory. The specific examples of their use in the hospital and acute care settings, in custodial settings and in SIL are a small representation of their use across all service sectors.

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<sup>14</sup> For more information see the Office of the Public Guardian's Submission to the Royal Commission's Criminal Justice System Issues Paper, March 2020.

### ***How often are people with disability subjected to restrictive practices?***

The frequency of the use of restrictive practices for a person with disability is often determined by:

- whether the use of any restrictive practice is applied consistently and by appropriately trained staff, family or carers and in accordance with a quality positive behaviour support plan developed by a qualified and experienced practitioner
- the degree to which the needs of the person with disability are being met
- any language barriers that exist for the person with disability and their ability to self-advocate and/or communicate their needs
- the environment in which the person with disability is being supported, including living, health and other community environments
- factors including the economic status of the person, if they have any history of trauma and their accommodation status
- whether the person has any other attribute that is commonly connected to discriminatory behaviour or negative stereotyping by a third party including Aboriginality, gender and race.

The combination of more than one of these factors for a person with disability leads to a greater risk of the use and frequency of restrictive practices for them.

### ***Why are restrictive practices used?***

It is the experience of the Office of the Public Guardian that restrictive practices are used by individuals and service sectors for a variety of reasons, including one or more of the following:

- a lack of awareness and understanding of the rights of people with disability and/or negative or indifferent attitudes towards people with disability
- insufficient resources and funding to provide person centred and individualised support to meet the needs of people with disability across service sectors
- inflexibility of mainstream services to respond to individualised needs of people with disability, for example a health care system not equipped to respond to the individualised health, support, emotional and cultural needs of a person with disability
- for the convenience of staff, family or carers
- the relative newness of positive behaviour support for people with disability and limited data to persuade individuals and service sectors of its value and effectiveness
- insufficient numbers of skilled workers and resources necessary to support people with disability with complex or high support needs while also maintaining a safe work and living environment for staff and others who may be impacted by a person's behaviour
- a lack of service providers specialised in supporting people with disability with complex needs in the community through supported accommodation
- it is an easier short term response to behaviour of concern than considering and addressing the underlying cause of the behaviour and/or implementing positive behaviour support strategies.

### ***What are the effects of restrictive practices?***

The effects of restrictive practices are dependent upon whether they are applied within a framework of:

- positive behaviour support that focuses on person-centred interventions that address the underlying causes of behaviours of concern
- consistent application by appropriately trained staff, family or carers
- a quality positive behaviour support plan developed by a qualified and experienced practitioner with the aim of reducing and eliminating any restrictive practices
- independent authorisation and monitoring.

If restrictive practices are used in a framework encompassing all of the above factors the effects of their use can be an improved life with greater autonomy of decision and action for the person with disability. However, in the absence of the above factors the effects of the use of restrictive practices include:

- further unmet need resulting in the further use of restrictive practices and often an increased severity of the restrictive practices
- disconnection of the person with disability from their life as any behaviours and the subsequent use of restrictive practices to address these behaviours intensifies
- the person with disability displaying increased behaviour of concern that leads to exclusion, harm to self and harm to others.

### ***Is the use of restrictive practices different for particular groups of people with disability? If so, how?***

The use of restrictive practices is different for particular groups of people depending on their level of unmet need, the services that are supporting them, their level of self-advocacy or representative advocacy and their ability to communicate their needs. The existence of certain factors common to particular groups of people with disability will expose those groups to greater risk of the use of restrictive practices.

For Aboriginal people with disability these factors include:

- the prevalence of disability and disparity in health for Aboriginal people and the corresponding high incidence of involvement of Aboriginal people with hospitals and acute care settings away from country, family and support networks
- the over-representation of Aboriginal people in the criminal justice system (and the high incidence of cognitive impairment or mental illness among this group) where they are removed from country, family and support networks
- many Aboriginal people speak English as a second or third language and are often not supported by trained interpreters
- language barriers compound the challenge for Aboriginal people with disability to self-advocate
- culturally unsafe support or other services that do not understand and/or align their practices to Aboriginal culture

- the limited disability support services provided in remote and very remote communities mean Aboriginal people have to leave country, family and support networks to receive appropriate disability support in regional centres where they are removed from country and their natural support networks
- any history of trauma.

For culturally and linguistically diverse people with disability these factors include:

- many culturally and linguistically diverse people are often not supported by trained interpreters
- language barriers compound the challenge for culturally and linguistically diverse people with disability to self-advocate
- culturally unsafe support or other services that do not understand and/or align their practices to the person's culture
- any history of trauma.

***Does the use of restrictive practices lead to further violence and abuse, neglect and exploitation of people with disability? If so, how?***

The use of restrictive practices leads to further violence, abuse, neglect and exploitation if they are used in the absence of:

- positive behaviour support that focuses on person-centred interventions that address the underlying causes of behaviours of concern, while safeguarding the dignity and quality of life of people with disability
- consistent application by appropriately trained staff, family or carers
- a quality positive behaviour support plan developed by a qualified and experienced practitioner with the aim of reducing and eliminating any restrictive practices
- an independent authorisation and monitoring framework.

Experiences of the Office of the Public Guardian as to how, in the absence of the above factors, the use of restrictive practices leads to further violence, abuse, neglect and exploitation include:

- further unmet need of the person with disability resulting in the further use and often increased severity of the types of restrictive practices
- disconnection of the person from their life, community, family and support network as any behaviours and the subsequent use of restrictive practices to address these behaviours intensifies
- the person with disability displaying increased behaviour that leads to the social isolation or exclusion of the person from their community, accommodation, service providers and other services, including health care
- physical or emotional harm to the person as a consequence of continued unmet need
- the disempowerment and shame of the person with disability.

***Are current approaches to restrictive practices effective? This may include laws, policies, principles, standards and practices.***

***Are there any gaps in the current approaches?***

***If so, what are the impacts of these gaps?***

The commencement of the *NDIS Authorisations Act 2019* (NT) met the Northern Territory's obligation under the NDIS Quality and Safeguarding Framework to establish a restrictive practice authorisation framework for NDIS service providers and NDIS participants. The authorisation framework and the establishment of a Senior Practitioner (with their associated expertise and support) in the Northern Territory was welcomed by the Office of the Public Guardian. However, the limited scope of the legislation has meant that many Territorians with a disability who receive services and supports from other service sectors, including aged care, education, justice and health care services, fall outside this framework and continue to be subject to restrictive practices in the absence of positive behaviour support and a legislated authorisation and monitoring framework for the use of those practices.

The exposure of people with disability to the use of unauthorised and unmonitored restrictive practices by organisations and service sectors not within the scope of the *NDIS Authorisations Act 2019*, the *Disability Services Act 1993* or the *Mental Health and Related Services Act 1998* is a significant concern for people with disability, the Office of the Public Guardian and many other advocacy and representative groups in the Northern Territory.

There is also a gap in community visitor services for people with disability in the Northern Territory. The Northern Territory Community Visitor Program, an independent visitor service located in the Anti-Discrimination Commission has very limited scope and is only mandated to protect the rights of people receiving treatment from mental health services or government run disability residential facilities. To complement the introduction of an authorisation and monitoring framework for the use of restrictive practices the Office of the Public Guardian advocates for the expansion of this service to include all service sectors using restrictive practices for persons with disability. Community visitor services provide a formal oversight mechanism and provide an independent voice for people with disability to exercise their rights in relation to the support they are receiving.

***In what circumstances may restrictive practices be needed?***

***What rules and safeguards should apply?***

***Should the same rules apply to all people?***

The Office of the Public Guardian is committed to strategies, practices and policies aimed at reducing and wherever possible eliminating the use of restrictive practices for people with disability. However, it is recognised that in certain circumstances restrictive practices may need to be authorised and used to protect the person with disability or others from harm. The tension between these statements is acknowledged.

Where restrictive practices are needed to protect the person with disability or others from harm the restrictive practices should be applied within a framework:

- that provides independent authorisation and monitoring of the restrictive practices by a suitably experienced expert, such as the Senior Practitioner in the Northern Territory
- where the use of restrictive practices is part of a holistic, multidisciplinary approach to the person's support needs and is underpinned by a person-centred positive behaviour support plan aimed at
  - improving the person's life
  - addressing any unmet need and the underlying cause of any behaviour
  - reducing or eliminating the need for any restrictive practices
- that includes a community visitor service to ensure formal oversight of the restrictive practices.

***How can the use of restrictive practices be prevented, avoided or minimised?***

***What needs to change in laws and policies?***

***What needs to change in the community and within organisations?***

***What are the barriers to this change?***

The use of restrictive practices can be prevented, avoided or minimised through positive behaviour support that focuses on person-centred interventions that address the underlying causes of behaviours of concern or challenging behaviours, while safeguarding the dignity and quality of life of people with disability<sup>15</sup>.

### Laws and policies

Positive behaviour support for people with disability should be embedded across all service sectors within an authorisation and monitoring framework similar to the approach detailed in the National Framework. Consistent legislative reform should be introduced across all states and territories to ensure consistency and certainty for people with disability and all service sectors involved in their support. Legislative reform must be preferred over the creation of policies or procedures that are not subject to the same level of transparency, accountability and sanctions that can be ensured through legislation.

With the establishment of legislative frameworks across all states and territories service sectors would necessarily be required to establish and implement appropriate policies and procedures, including education and training, for the use of any restrictive practice for people with disability.

The ultimate aim of all legislation, policies and procedures should be the reduction and elimination of restrictive practices for people with disability.

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<sup>15</sup> NDIS Quality and Safeguards Commission. Behavior support. Retrieved from <https://www.ndiscommission.gov.au/providers/behaviour-support>

### The community and organisations

It is the shared responsibility of people with disability, advocacy groups, service providers and governments to continue raising awareness of the rights of people with disability and how individual and collective attitudes can shape life experiences and outcomes for people with disability. For mainstream services and the community not directly involved in the support of people with disability there must be increased awareness and responsiveness to the individualised needs of people with disability.

Community attitudes and responsiveness to people with disability and their needs are part of the context of an individual which determines whether their needs are met or unmet and whether there is a response of behaviour of concern or not. When people with disability are empowered through supported decision-making, social inclusion within their community and valued as important contributors to society there is a much higher probability that their needs will be met.

### Barriers

Barriers to change include:

- legislative reform across all states and territories to establish an authorisation and monitoring framework for the use of restrictive practices across all service sectors and with the aim of reducing and eliminating these practices
- appropriate financial and human resourcing (including training and education) for service sectors to provide positive behaviour support underpinned by quality positive behaviour support plans
- a significant shortage of experienced behaviour support practitioners nationally, including in the Northern Territory
- appropriate financial and human resourcing for mainstream services to provide individualised, person centred responses for people with disability
- a failure by governments, private enterprises and communities to recognise the social and economic contribution of people with disability to their communities and the associated social and economic cost of this failed recognition.

### ***What alternatives to restrictive practices could be used to prevent or address behaviours of concern?***

With the engagement of positive behaviour support that focuses on person-centred interventions and addresses the underlying causes of behaviours of concern, the need for restrictive practices should be minimised or eliminated. Within this support restrictive practices should only be used as a last resort (where there are no alternatives) to protect the person with disability or others from harm.

Consistent positive behaviour support, underpinned by a quality positive behaviour support plan, should extend across all aspects of the life of a person with disability, including disability support, education, employment, health and justice and with necessary modifications, across all of the person's life stages. Any individual or organisation, including mainstream services should receive training and/or advice about how they can support the person. The level of training and shared

information will be dependent upon the level of support an individual or organisation provides to the person. For example, if a person is challenged by long waiting times in an enclosed environment, arrangements may be made with the person's health clinic for staff to telephone when the doctor is ready for the person to avoid the person waiting in the health clinic for an extended period.

Systemic awareness, education and training is required across mainstream services in relation to how organisations and businesses can modify their service delivery (beyond just physical access) to accommodate the needs of different groups of people with disability. This may include the use of interpreters and the use of supported decision-making and consideration to factors such as lighting, signage, seating, placement of products, and the attitude and training of staff.

### ***Anything else?***

Embedding positive behaviour support that focuses on person-centred interventions and addresses the underlying causes of behaviours of concern is fundamental to the reduction and elimination of restrictive practices. It is underpinned by the CRPD and by attitudinal change to people with disability. It is the experience of the Office of the Public Guardian that attitudinal change will come with:

- participation of the person with disability across all aspects of their own decision-making
- social inclusion of the person with disability in all aspects of community life
- recognition of the contribution that people with disability make to our society through lived experiences of all sectors of the community with people with disability.

In the Northern Territory the Office of the Public Guardian advocates for the following three key initiatives to enable and increase participation in decision-making, social inclusion and recognition of the contribution of people with disability:

1. supported decision-making
2. advocacy
3. community visitor services.

Detailed submissions in relation to these initiatives are contained in the Office of the Public Guardian's Submission to the Royal Commission's Rights and Attitudes Issues Paper, August 2020.

### ***Recommendations***

1. The Commonwealth, state and territory governments should commit to the establishment of an authorisation and monitoring framework for the use of restrictive practices for people with disability similar to the approach agreed in the National Framework. This framework should extend across all service sectors and be aimed at reducing and eliminating the use of restrictive practices for people with disability.

2. Expansion of positive behaviour support provided under the NDIS so that consistent behaviour support strategies can follow the person with disability across all service sectors, including health, education, justice and aged care.
3. The Commonwealth, state and territory governments should explore initiatives and incentives for governments, private enterprises and community organisations to modify their business or service delivery to accommodate the needs of people with disability.
4. The Commonwealth and state and territory governments should fund supports for people with disability to be supported to exercise their own decision-making. For NDIS participants this may occur through the NDIS. For non-NDIS participants the Commonwealth and state and territory governments should determine an appropriate supported decision-making framework and funding model.
5. The Commonwealth and Northern Territory Governments should commit to increased funding for advocacy services across the Northern Territory for people with disability.
6. Advocacy services and representative groups should be appropriately funded to provide group and 1:1 training to develop self-advocacy skills for people with disability and to develop appropriate resources for people with disability to understand and develop their self-advocacy skills and expertise.
7. All participants within the NDIS should be funded to develop their self-advocacy skills.
8. The Northern Territory Government should commit to an expansion of the Community Visitor Program to encompass all disability service providers and all other service sectors where restrictive practices are used for people with disability.